

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
December 12, 2006 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Ruth Ann Wall, Presiding Officer, presided. No Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Disciplinary Case/Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

- | | |
|--|--------------------|
| 1. Claire Serena Williams
t/a Seneca Services
File Number 2006-00349 (Disc)
(NO DECISION MADE) | James Welsh – C |
| 2. Michael Keeton
t/a M & B Siding and Windows
File Number 2006-04689 (Disc)
(NO DECISION MADE) | Sandra Fossett – C |
| 3. Travis MacDermott
t/a T & W Designs
File Number 2006-02939 (Disc)
(NO DECISION MADE) | None |
| 4. Design and Construction LLC
File Number 2007-00400 (Disc)
(NO DECISION MADE) | None |
| 5. Ernest Martin Jr.
t/a Martin Home Improvement
File Number 2006-04552 (Disc) | Martin – R |

6. Matthew Wayne Westfall
t/a Matt Westfall
File Number 2006-04429 (Disc)
(NO DECISION MADE)

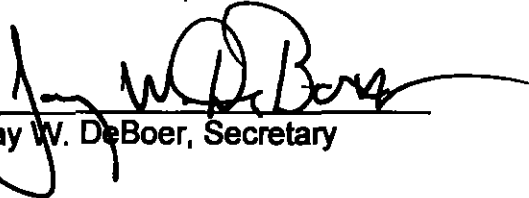
None

The meeting adjourned at 1:10 p.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Jay W. DeBoer, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re. Ernest Martin Jr., t/a Martin Home Improvement
Tappahannock, VA 22560

File Number 2006-04552
License Number 2705067723

CONSENT ORDER

Respondent Ernest Martin Jr , t/a Martin Home Improvement ("Ernest Martin Jr ") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's Regulations provides:

18 VAC 50-22-200. Remedial education, revocation or suspension; fines.

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On November 6, 2006, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Ernest Martin Jr at the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On December 12, 2006, the Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation in Richmond, Virginia.

The following individuals participated at the conference: Ernest Martin Jr, Respondent; Jennifer Kazzie, Staff Member; and Ruth Ann Wall, Presiding Officer.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

During the IFF, it appeared that Martin understood the monetary limit imposed upon his Class C license and the limits of his specialty services. However, Martin explained that he entered into this contract because the complainant could not find another contractor to repair storm damage to the boathouse. Martin indicated that he digs footers for mobile homes, which falls under the \$7,500.00 limit. Martin was under the impression that the complainant had already obtained a permit as additional work was being performed at the subject property.

The Board and Ernest Martin Jr., as evidenced by the signatures affixed below, enter into this Consent Order. Ernest Martin Jr. knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Ernest Martin Jr. acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Ernest Martin Jr. consents to the following term(s):

	Count 1	18 VAC 50-22-260.B.9	\$100.00
	Count 2	18 VAC 50-22-260.B.27	\$300.00
	Count 3	18 VAC 50-22-260.B.27	\$300.00
	Count 4	18 VAC 50-22-260.B.6	\$500.00
	Count 5	18 VAC 50-22-260.B.31	\$50.00

	TOTAL MONETARY PENALTIES		\$1,250.00

Further, for violation of Counts 1 through 5, Ernest Martin Jr. agrees to successfully complete a Board-approved remedial education class.

Ernest Martin Jr. also agrees to pay \$150.00 in Board costs.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within ninety days of the effective date of this consent order unless otherwise specifically noted above. Ernest Martin Jr. acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Ernest Martin Jr. will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Ernest Martin Jr. acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Ernest Martin Jr.'s license until such time as there is compliance with all terms of this Order. Ernest Martin Jr. understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Ernest Martin Jr.
t/a Martin Home Improvement

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this ____ day of _____,
2006.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this ____ day of _____, 2006.

Board for Contractors

BY _____
Jay W DeBoer, Secretary

EOO

**VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917**

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: August 17, 2006 (revised October 31, 2006)

FILE NUMBER: 2006-04552
RESPONDENT: Ernest Martin Jr., t/a Martin Home Improvement
LICENSE NUMBER: 2705067723
EXPIRATION: March 31, 2008

SUBMITTED BY: Renee H Popielarz
APPROVED BY: E. Wayne Mozingo

COMMENTS.

None.

Ernest Martin Jr ("Martin"), t/a Martin Home Improvement was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705067723).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On April 24, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Inez T. Dillon ("Dillon") regarding Martin (Exh. C-1)

Martin entered into a written proposal ("the contract"), in the amount of \$9,665.00, with Dillon to run electric to a boathouse and repair the boathouse at 19599 Tidewater Trail, Tappahannock, Virginia 22560. (Exh. C-2)

On September 13, 2005, Dillon paid Martin \$3,500.00 by check. (Exh. C-4) On September 22, 2005, Dillon paid Martin \$6,515.00 by check. (Exh. C-5)

1. **Board Regulation**

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
 - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

Historical Notes

Derived from VR220-01-2.1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Pnnt Date: August 1, 2005

FACTS:

The contract used by Martin in the transaction failed to contain subsections a., c. (not specific regarding repair work to be performed), d. (second half of element is missing), e., f., h., and i. (mentions extra cost only) (Exh. C-2)

On July 6, 2006, Martin stated he was not aware of all the contract requirements. (Exh. I-2)

2. Board Regulation

18 VAC 50-22-260 Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed

Historical Notes

Derived from VR220-01-2 1 §5.7, eff March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date August 1, 2005

FACTS:

The contract indicated a price of \$9,665 00. (Exh. C-2)

On March 19, 2002, Martin was issued Class C contractor's license number 2705067723. (Exh. I-4)

Section 54.1-1100 of the Code of Virginia states, "Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500..."

On July 6, 2006, Martin stated he usually breaks up the work so it will not go over the price allowed for his license. Martin further stated that Dillon was an older woman, so he just put it all on one price and overdid his price. (Exh. I-2)

3. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts

- 27 Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

Historical Notes

Derived from VR220-01-2 1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001.

Print Date August 1, 2005

FACTS:

On March 19, 2002, Martin was issued Class C contractor's license number 2705067723 with the following specialty services: Concrete contracting (CEM), Billboard/sign contracting (BSC), Painting and wallcovering contracting (PTC), Masonry contracting (BRK), Roofing contracting (ROC), Home improvement contracting (HIC), and Commercial improvement contracting (CIC). (Exh. I-4)

Pursuant to 18 VAC 50-22-30, "Concrete contracting' (Abbr: CEM) means that service which provides for all work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry. This includes but is not limited to finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing, and waterproofing. Construction and assembling of forms, molds, slipforms, pans, centering, and the use of rebar is also included. The BLD and H/H classifications also provide for this function."

Pursuant to 18 VAC 50-22-30, "Billboard/sign contracting' (Abbr: BSC) means that service which provides for the installation, repair, improvement, or dismantling of any billboard, or structural sign permanently annexed to real property. H/H and BLD are the only other classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function."

Pursuant to 18 VAC 50-22-30, "Painting and wallcovering contracting' (Abbr: PTC) means that service which provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding, and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The BLD classification and the HIC and CIC specialties also provide for this function."

Pursuant to 18 VAC 50-22-30, "Masonry contracting' (Abbr: BRK) means that service which includes the installation of brick, concrete, block, stone, marble, slate, or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, and cleaning and welding of reinforcement steel related to masonry construction. The BLD classification and HIC and CIC specialties also provide for this function."

Pursuant to 18 VAC 50-22-30, "Roofing contracting' (Abbr: ROC) means that service which provides for the installation, repair, removal, or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The BLD classification and the HIC and CIC specialties also provide for this function."

Pursuant to 18 VAC 50-22-30, "Home improvement contracting' (Abbr: HIC) means that service which provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property. The BLD classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings "

Pursuant to 18 VAC 50-22-30, "Commercial improvement contracting' (Abbr: CIC) means that service which provides for repair or improvement to nonresidential property and multifamily property as defined in the Virginia Uniform Statewide Building Code. The BLD classification also provides for this function. The CIC classification does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC or gas work."

Between September 19, 2005 and September 22, 2005, Martin ran a new electrical line to the boathouse. (Exh. C-1, C-2, and I-1)

On July 6, 2006, Martin stated that he handled having the new electrical line ran but he had someone else do the work. Martin stated he was unable to provide the name of the person who performed the work at that time. (Exh. I-2)

As of August 16, 2006, Martin has failed to provide any information indicating that someone else performed this work.

4. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6 Misconduct in the practice of contracting.

Historical Notes

Derived from VR220-01-2 1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Print Date August 1, 2005

FACTS:

On or about September 19, 2005, Martin performed work to repair a boathouse and run an electrical line to the boathouse. (Exh. I-1 and I-2)

As of July 11, 2006, Martin failed to obtain a required permit for the repair work and electrical work as required by the Essex County Building Inspection Department (Exh. I-3)

5. Board Regulation

18 VAC 50-22-260 Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

Historical Notes

Derived from VR220-01-2 1 §5 7, eff March 31, 1995, amended, Virginia Register Volume 17, Issue 21, eff September 1, 2001

Print Date August 1, 2005

FACTS:

The contract specified, "Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate."

During the construction, Martin also filled a hole with cement for an additional cost of \$350.00. (Exh C-3 and C-5)

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

1. Name: Ruth Ann Wall
2. Title: Presiding Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on December 12, 2006
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Ruth Ann Wall
Signature

December 12, 2006
Date